

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

8.929 ACRES OF LAND, MORE OR LESS,  
SITUATE IN ARLINGTON COUNTY,  
VIRGINIA;

and

ARLINGTON COUNTY, VIRGINIA et al.,

Defendants.

Civil No. 1:20-cv-667-LMB-JFA

PLAINTIFF UNITED STATES' MOTION FOR SUMMARY JUDGMENT

Plaintiff United States of America, by its undersigned counsel, pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56, respectfully moves this Court for summary judgment on Defendant Arlington County's claim for monetary compensation in this eminent domain proceeding because the United States is providing substitute facilities, the adequacy of which is unchallenged. As set forth in accompanying Memorandum of Law, Arlington County is not entitled to a cash payment on top of the substitute facilities because: (1) the substitute facilities will make Arlington County whole, (2) the County may not claim cash, measured by the fair market value of the condemned property, where, as here, the United States is providing substitute facilities, and (3) in all events, the value of the Project benefits that will be provided to Arlington County exceed the fair market value of the land taken, establishing that no further compensation is due.

Support for this motion is set forth in an accompanying Memorandum of Law, Defendant Arlington County's Answer and Demand for Jury Trial, Dkt. 42, the record in this case, and the attached exhibits. The attached exhibits are as follows:

- Exhibit 1      A true and correct copy of the Declaration of Katharine Kelley in Support of Plaintiff's Rule 71.1 Motion to Determine That Fair Market Value Has No Relevance To This Proceeding. Ms. Kelley's Declaration previously was filed with the Court as Dkt. 49-1. The United States is re-attaching a true and correct copy of the previously filed declaration for the convenience of the Court.
- Exhibit 2      A true and correct copy of the Declaration of Justin Buller in Support of Plaintiff United States' Motion for Summary Judgment. Mr. Buller's declaration attaches an Exhibit A, which is a Memorandum of Understanding between the United States and Arlington County, dated January 2013.
- Exhibit 3      A true and correct copy of the Declaration of Gregg Schwieterman in Support of Plaintiff United States' Motion for Summary Judgment. Mr. Schwieterman's declaration includes four attachments: Exhibits A and B are the executive summaries of traffic studies performed in 2017 and 2020; Exhibit C is photographs of current Columbia Pike and illustrations showing the area after completion of the Project; and Exhibit D is a previously served disclosure of Mr. Schwieterman, explaining how HNTB determined that approximately five acres will be conveyed to Arlington County at the conclusion of the Project.
- Exhibit 4      A true and correct copy of portions of the transcript of the December 11, 2020 deposition of Mark Schwartz, Arlington County Manager.
- Exhibit 5      A true and correct copy of portions of the transcript of the December 23, 2020 deposition of Dennis M. Leach, Arlington County's Director of Transportation.
- Exhibit 6      A true and correct copy of portions of the transcript of the November 5, 2020 deposition of Anthony Fusarelli, Arlington County's Rule 30(b)(6) deposition designee.
- Exhibit 7      A true and correct copy of portions of the transcript of the December 10, 2020 deposition of Thomas Shifflett.
- Exhibit 8      A true and correct copy of Defendant Arlington County's interrogatory responses served on October 9, 2020, as well as Defendant Arlington County's supplemental interrogatory responses, served on January 15, 2021 (supplementing the responses to interrogatory nos. 6, 10, 15-18).

- Exhibit 9      A true and correct copy of Deed Book 1288, Page 38, a deed by and between the United States and Arlington County, Virginia, dated November 27, 1956.
- Exhibit 10     A true and correct copy of Deed Book 1511, Page 394, a quitclaim deed by and between the United States and the County Board of Arlington County, Virginia, dated May 23, 1963.
- Exhibit 11     A true and correct copy of 40 U.S.C. § 345c (1990), downloaded from Westlaw.
- Exhibit 12     A true and correct copy of a survey performed by Precision Measurements, Inc., showing Area B-2 of the Southgate Road Parcel.
- Exhibit 13     A true and correct copy of an Arlington County Board Report and Resolution, as well as a certification that the Board approved the Resolution on April 25, 2020, produced by Arlington County in this case (AC\_0003244-3250). This document previously was marked as Exhibit 23 and discussed and explained in the Schwartz deposition at Tr. 155:19-165:11 (*see* Exhibit 4).
- Exhibit 14     A true and correct copy of an email from Michael Dangerfield dated October 25, 2011, attaching documents prepared by Arlington County (ANC0012559-12654). This document previously was marked as Exhibit 82, and the attachments to this document were discussed and explained in the Leach deposition at Tr. 189:1-201:15 (*see* Exhibit 5). In addition, Arlington County has admitted that it prepared the documents attached to the email and that it delivered those documents to the United States in or around October 2011. *See* Exhibit 21, responses to Request for Admission Nos. 23-24.
- Exhibit 15     A true and correct copy of an email from Brian Stout to Michael Dangerfield dated March 16, 2012, attaching a memorandum prepared by Arlington County (ANC0012552-12558). This document previously was marked as Exhibit 83 and discussed in the Leach deposition at Tr. 202:5-206:10 (*see* Exhibit 5). In addition, Arlington County has admitted that Mr. Stout transmitted this email, that Mr. Stout was an employee of Arlington County when he transmitted this document, and that Mr. Stout was involved in negotiations with the United States regarding a potential land swap when he sent this document. *See* Exhibit 21, responses to Request for Admission Nos. 19-22.
- Exhibit 16     A true and correct copy of an Arlington County press release dated October 23, 2012, previously produced by Arlington County in this case (AC\_0015087). This document previously was marked as Exhibit 35 and discussed in the Leach deposition at Tr. 206:11-208:5 (*see* Exhibit 5). In addition, Arlington County has admitted that this document is a true and correct copy of a news release that it issued in 2012. *See* Exhibit 21, response to Request for Admission No. 14.
- Exhibit 17     A true and correct copy of a letter from Barbara Donnellan, then the Arlington County Manager, to Patrick Hallinan, Executive Director, dated October 31,

2014, attaching comments to a Revised Programmatic Environmental Assessment, previously produced by Arlington County in this case (AC\_0017152-17156). This document previously was marked as Exhibit 46 and discussed and explained in the Leach deposition at Tr. 211:13-214:6 (*see* Exhibit 5). In addition, Arlington County has admitted that this document is a true and correct copy of a letter by Ms. Donnellan transmitting Arlington County's comments to a Revised Programmatic Environmental Assessment for the Arlington National Cemetery Real Property Master Plan. *See* Exhibit 21, response to Request for Admission Nos. 15-17.

- Exhibit 18      A true and correct copy of a letter from Mark Schwartz, then the Acting Arlington County Manager, to Patrick Hallinan, Executive Director, dated December 18, 2015, previously produced by Arlington County in this case (AC\_0016954-16957). This document previously was marked as Exhibit 50 and discussed and explained in the Schwartz deposition at Tr. 76:2-82:12 (*see* Exhibit 4).
- Exhibit 19      A true and correct copy of a letter from Mark Schwartz, Arlington County Manager, to Katharine Kelley, Superintendent of Arlington National Cemetery, dated March 27, 2018, previously produced by Arlington County in this case (AC\_0001112-1148). This document previously was marked as Exhibit 59 and discussed and explained in the Schwartz deposition at Tr. 117:9-126:11 (*see* Exhibit 4) and in the Leach deposition at Tr. 217:1-220:15 (*see* Exhibit 5).
- Exhibit 20      A true and correct copy of a letter from Mark Schwartz, Arlington County Manager, to Kathy Perdue, U.S. Army Corps of Engineers, dated September 21, 2018, previously produced by Arlington County in this case (AC\_0000487-509). This document previously was marked as Exhibit 60 and discussed and explained in the Schwartz deposition at Tr. 126:15-139:4 (*see* Exhibit 4).
- Exhibit 21      A true and correct copy of Defendant Arlington County's Responses and Objections to Plaintiff United States' Second Set of Requests for Admission, served January 15, 2021.

A proposed order is attached.

WHEREFORE, the United States respectfully requests that the Court grant this Motion for Summary Judgment, order that the substitute facilities that the United States will provide to Arlington County constitute just compensation for the taking, and order that Arlington County is not entitled to any cash payment, including a cash payment measured by the fair market value of the Southgate Road Parcel (defined as Tract 104-1 in the Declaration of Taking, Dkt. 2).

Dated: January 26, 2021

Respectfully submitted,

RAJ PAREKH  
ACTING UNITED STATES ATTORNEY

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*Attorneys for Plaintiff United States of America*

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2021, I will electronically file the foregoing Plaintiff United States' Motion for Summary Judgment, attached exhibits, and proposed order with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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